



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 3, 1998

The Honorable J.E. Brown  
The Senate of the State of Texas  
P.O. Box 12068  
Austin, Texas 78711-2068

OR98-2929

Dear Senator Brown:

You ask whether a school district is required to provide student records to the Texas Department of Protective and Regulatory Services ("DPRS") without parental permission and in the absence of a showing of an emergency as provided for in title 20, section 1232g(b)(1)(I) of the United States Code. Your request was assigned ID# 109303.

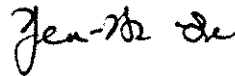
The Open Records Act includes two exceptions for student records, sections 552.026 and 552.114 of the Government Code. Section 552.026 provides that education records of an educational agency or institution shall be released in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. FERPA protects privacy interests of parents in their children's education records, and in most circumstances, prohibits the release of student records without a parent's written consent. Section 552.114(b)(3) provides that information in a student record at an educational institution funded wholly or partly by state revenue shall be made available on the request of a person conducting a child abuse investigation required by subchapter D of chapter 261 of the Family Code. Chapter 261 of the Family Code governs the report and investigation of allegations of child abuse or neglect. Fam. Code §§ 261.001, *et seq.* A school district's typical report of child abuse will most likely involve the release of information from a child's education records. *See* Fam. Code § 261.104(3) (person making report shall identify any other pertinent information concerning alleged or suspected abuse or neglect).

You ask whether a school district must provide DPRS, in its investigation under chapter 261, with student records absent parental consent and absent a showing of an emergency as provided by title 20, section 1232g(b)(1)(I) of the United States Code. The Department of Education's Family Policy Compliance Office (the "compliance office") has answered this question in the affirmative in its letter to a law firm representing the San Antonio Independent School District. The compliance office is responsible for interpreting and construing FERPA and we defer to its decision. We have attached a copy of the compliance office's letter ruling for your convenience.

The ruling concluded that because chapter 261 of the Family Code was promulgated pursuant to the federal Child Abuse Prevention and Treatment Act ("CAPTA"),<sup>1</sup> the conflict is between two federal statutes rather than the Texas statute and FERPA. FERPA generally prohibits an educational agency or institution from releasing educational records without parental consent while CAPTA mandates the reporting of known and suspected instances of child abuse or neglect to the proper authorities. Given the irreconcilable conflict, the compliance office concluded that the later enacted statute governs. *Watt v. Alaska*, 451 U.S. 259, 267 (1981). In applying this statutory construction, the compliance office held that "given the choice between promoting the purposes of the later enacted Federal child abuse reporting requirements [footnote omitted] and a parent's right to protect against the disclosure of his or her child's education records without their consent, Congress intended that any suspected incidents of abuse should be reported." Accordingly, we agree with the compliance office's ruling and conclude that, even without parental permission or a showing of an emergency as provided for by FERPA, a school district is required to provide student records to DPRS if DPRS requests them in connection with an investigation of child abuse or neglect pursuant to chapter 261 of the Family Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 109303

Enclosures: Letter ruling from  
Family Policy Compliance Office

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<sup>1</sup>42 U.S.C. § 5106a(b)(1)(A).

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